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October 9, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OUR FILE NUMBER
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VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.E.
Washington, D.C. 20054

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**Re: CC Docket No. 96-128; NSD File No. L-99-34: In the
Matter of Implementation of the Pay Telephone
Classification and Compensation Provisions of the
Telecommunications Act of 1996 and RBOC/GTE/SNET
Payphone Coalition Petition for Reconsideration**

Dear Ms. Salas:

Network Enhanced Telecom, LLP d/b/a Network IP ("NET"), by its undersigned counsel, herby submits, an original and three (3) copies of its comments in the above captioned proceeding. These comments are made with reference to the Public Notice dated August 20, 2001, and published in the Federal Register on September 7, 2001, soliciting comments no later than October 9, 2001.

Please acknowledge the enclosed extra copy with a date stamp.

Feel free to contact me with any questions or concerns.

Sincerely,

Richard J. Dyer
for O'MELVENY & MYERS LLP

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Classification and Compensation)	
Provisions of the)	
Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Reconsideration)	

**COMMENTS OF
NETWORK ENHANCED TELECOM, LLP d/b/a NETWORK IP**

Network Enhanced Telecom, LLP d/b/a Network IP ("NET"), by its counsel, and pursuant to the Commission's Public Notice dated August 20, 2001, seeking comments on the Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration ("*Second Order on Reconsideration*")¹, hereby submits its Comments in the above-captioned proceeding.

Introduction

NET applauds the Commission on its continuing efforts to promulgate comprehensive and equitable payphone compensation rules, and largely supports the *Second Order on Reconsideration*, in which the Commission clarified that the first facilities-based interexchange carrier ("FB-IXC") to which a local exchange carrier ("LEC") routes a completed coinless payphone is responsible for compensating payphone service providers ("PSPs"). Consistent with the Commission's reasoning in previous payphone compensation decisions, the *Second Order on*

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, NSD File No. L-99-34, Second Order on Reconsideration, FCC 91-109 (rel. April 5, 2001) (Second Order on Reconsideration).

Reconsideration concludes that the FB-IXC is the carrier that is in the best position to track calls originated from payphones, and thus is the entity that should be responsible for compensating PSPs.

While it is clear that the Commission's goal in adopting the *Second Order on Reconsideration* was to fulfill the Congressional mandate of Section 276 of the Telecommunications Act of 1996 (the "Act"),² several FB-IXCs have already taken steps to frustrate that objective. Indeed, several FB-IXCs, citing nothing more than administrative inconvenience, have instituted draconian new policies designed to foist unjustifiable payphone compensation costs on other carriers who utilize their services. Specifically, FB-IXCs have unilaterally determined that going-forward they will consider ***all calls*** originated from payphones and passed off to their facilities-based resellers of such services as compensable payphone calls, regardless of whether the calls are actually completed. This position stands in direct opposition to the plain language of the Act and the Commission's rules. If the FCC sustains the FB-IXCs' position it will immediately result in higher costs to consumers, and in many instances for telecommunications services they never receive.

NET urges the Commission to ensure that the costs associated with payphone compensation are properly borne by the responsible parties, and that consumers are protected from rate increases due to nothing more than the fact that FB-IXCs are unwilling to meet their regulatory obligations. Specifically, NET requests that the Commission (1) affirm that its definition of a "completed" call means one that is answered by the called party, and prohibit FB-IXCs from using language in their contracts that suggests otherwise; (2) reject WorldCom's

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* ("Telecom Act").

Petition to define a completed call as one that is passed to a facilities-based reseller; and (3) reject Global Crossing's petition to limit the ability of telecommunications providers to contract with one another.

Background

NET is an application service provider which, through a combination of its switching functionalities and software applications, enables its telecommunications carrier customers ("Customers") to track call usage and other information on the prepaid accounts of end users on a real-time basis through web-access. Specifically, NET makes features and functionalities available to Customers that enable Customers to operate the functional equivalent of their own switches. NET operates exclusively as a carrier's carrier, and neither provides any services directly to end users nor holds itself out on any prepaid cards as a telecommunications service provider. NET typically acts as the responsible organization ("RespOrg") with respect to toll-free numbers assigned to its Customers.

Calls originated from a payphone using a prepaid card offered by NET's Customers are first handled by the LEC serving the payphone, and are then routed to the FB-IXC with whom NET has contracted for transport services. The FB-IXC transports the call to one of the three switches that NET maintains throughout the United States, at which point NET, consistent with its agreements with Customers, re-routes the call for termination. NET's Customers at all times retain complete control over end user pricing.

I. The Commission Should Affirm That Only Completed Calls Are Subject To Compensation

Section 276 (b)(1)(A) of the Act could not be any clearer – it directs the Commission to promulgate regulations that “establish a per call compensation plan to ensure that all payphone

service providers are fairly compensated for *each and every completed* intrastate and interstate call using their payphone . . .”³ The Commission, adhering to the plain dictates of Congress, addressed this issue in its *Report and Order*, stating that “[w]e conclude that a ‘completed call’ is a call that is answered by the called party.”⁴ However, it seems that several FB-IXCs now seek to inject ambiguity where there is none. No legitimate reading of Section 276 of the Act and the Commission’s rules could result in any other conclusion than compensable payphone calls are those calls originated from payphones that are actually completed, *i.e.* a call that is answered by the called party.

A. The Technology Exists to Determine Whether Calls Originated From Payphones Are Actually Completed

As a threshold matter, NET is not aware of any serious steps taken by Global Crossing or other FB-IXCs to develop an industry solution to any difficulties associated with determining whether calls originated from payphones are actually completed. Rather, after adoption of the *Second Order on Reconsideration*, FB-IXCs have primarily focused their attention on instituting stop-gap measures and “work-around” solutions to payphone compensation issues. NET believes that given the right level of cooperation from FB-IXCs, NET could in short order implement systems that will enable FB-IXCs to determine precisely which calls originated from payphones are completed and which are not. Thus, at a minimum, any rule adopted by the Commission should provide that FB-IXCs must institute mechanisms to ascertain whether payphone calls are actually completed where it is technically feasible to do so.

³ 47 U.S.C. §276 (b)(1)(A) (emphasis added).

⁴ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541 ¶ 63 (1996) (*Report and Order*).

Moreover, the technology that would enable FB-IXCs to determine whether calls are actually completed can be deployed at little or no cost. By way of background, in the prepaid calling card context, there are actually two legs to a completed call. The first occurs when an end-user dials an 800-number and accesses an 800-number platform. The second occurs when the terminating leg of the call is actually answered by the called party. Answer supervision can be passed to a terminating carrier via the SS7 stream, thereby notifying the originating carrier that the call was actually answered on the terminating end.

B. The Commission Should Not Implement the Use of Timing Surrogates as a Proxy for Completed Calls

Global Crossing's Petition argues that there is an inherent difficulty in compensating PSPs for completed calls in situations where it passes a call to a facilities-based reseller or other switched based providers.⁵ It argues that its ability to track a call to completion is hampered once it is handled by a facilities-based reseller. In order to rectify this difficulty, Global Crossing suggests the use of specific timing surrogates for determining whether a particular call is completed and hence, compensable. Specifically, it proposes that calls be considered completed if the carrier time field at the originating switch indicates that the duration of a particular call was over 25 seconds. Alternatively, in the case of a 950-call, it proposes that the call be considered complete if it lasts over 45 seconds.

Adoption of timing surrogates not only fails to comply with the Act, but also would be extremely detrimental to consumers. The actual surrogates proposed by Global Crossing are patently unreasonable, and appear to be nothing more than a concealed attempt to arrive at the

⁵ See *Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification*, CC Docket No. 96-128 (filed May 29, 2001).

same inequitable result proposed by other FB-IXCs, *i.e.* that all calls originated from payphones should be subject to payphone compensation. By way of background, a debit card customer must enter a PIN and other data before the call is ever connected. Under Global Crossing's proposal, virtually every debit card call from a payphone would be subject to payphone compensation since Global Crossing would consider them completed after only twenty five seconds. Under this scenario, Global Crossing would compensate the PSP and pass along this charge to the facilities-based reseller who would in turn pass it to its customers, immediately resulting in a higher fee paid by the end user for a call that may never be answered (but that took 25 seconds to place). NET estimates that this scheme could result in rates that *double* an end user's cost of making a prepaid debit card call, a result that cannot be reconciled with the Act or the Commission's rules.

C. The Commission Should Deny WorldCom's Petition Seeking to Define a Completed Call As One That is Handed Off to a Switched-Based Reseller

In its Petition for a Declaratory Ruling and Petition for Reconsideration, WorldCom has asked the Commission to abandon completely the plain language of the Act, and to eliminate any actual nexus between payphone compensation and call completion -- a request that must be rejected. Specifically, WorldCom has asked the Commission to define a completed call as 1) a call that is completed on the FB-IXC's network; *or* 2) a call that is handed off to a switch-based reseller that does not have a prior agreement with all PSPs to pay payphone compensation.⁶

NET has no objection to the first definition propounded by WorldCom to the extent that it involves a call that is carried exclusively on WorldCom's network, and thus can easily be

⁶ See *WorldCom, Inc. Petition for Declaratory Ruling and Petition for Reconsideration*, CC Docket No. 96-128 (filed May 29, 2001).

identified by WorldCom as having been completed, *i.e.* the call recipient answered the phone. If WorldCom intends for its first definition to encompass any other situation, or to impose a payphone compensation liability on any call that is not actually completed, NET is opposed to this position for reasons set forth in these comments.

NET does object, however, to WorldCom's second definition of a completed call which states that any call not exclusively handled by WorldCom, but rather handed off to another carrier, is "completed" at the time of hand off, irrespective of whether the call is actually answered by the called party. It is difficult to imagine a more attenuated definition of call completion than that espoused by WorldCom. Basically, WorldCom seeks to have all facilities-based resellers of its services declared to be WorldCom sureties, and to compensate WorldCom for any payphone call delivered to their platform, whether or not such compensation is properly due.

WorldCom's so-called "call path proxy" is untenable, and completely diverges from any definition of a "completed" call that Congress envisioned. Moreover, it leaves facilities-based resellers in a dilemma, since they are in either the position of not being able to recover the surcharges foisted upon them by WorldCom, or passing through those charges to end users, even where those charges were not lawfully incurred. The Commission has determined that the first facilities-based carrier to which a payphone call is routed is in the best position to bear any burdens associated with tracking payphone calls. WorldCom apparently believes that it can satisfy its burden by merely shifting it to other parties. WorldCom's request should be rejected.

As a final note, WorldCom's "call path proxy" creates a path to certain fraud. Indeed, an unscrupulous payphone vendor could arrange to have innumerable calls made to the initial 800-number leg of a prepaid call, and disconnect before the call is ever answered on the terminating

end. Under WorldCom's plan, each and every such call would be considered "completed," thus compensation would be paid by WorldCom to the relevant PSP and passed on to the facilities-based reseller.

II. The Commission Should Not Limit the Ability of Carriers to Negotiate Private Contractual Arrangements with PSPs

The Commission should deny Global Crossing's Petition seeking to limit the rights of carriers to enter into contractual arrangements with PSPs.⁷ As a preliminary matter, it is not clear what Global Crossing's objective is in requesting that the Commission preclude PSPs and facilities-based resellers from entering into contractual arrangements, or what circumstances exist that would warrant the Commission's departure from its long-standing policy of favoring private contracts. While Global Crossing correctly notes that the *Second Order on Reconsideration* has imposed on it the obligation to compensate PSPs for calls in which it is the first facilities-based carrier, it utterly fails to set forth any reason why PSP's should be precluded from contracting with another carrier or third party regarding payment arrangements.

While NET does not have a clear concept of what, if any, third party agreements may be entered into in the future (and Global Crossing certainly did not provide any specifics on any such potential agreements that may be problematic), the Commission indicated its preference for private contracts in this proceeding when it stated that it "do[es] not intend to nullify private contractual arrangements to which PSPs have already agreed, if all involved parties wish to continue them. Accordingly we also include in the revised rule a proviso that PSPs may continue to rely upon any current or future contractual arrangements they may have with


⁷ See *Global Crossing Telecommunications, Inc. Petition for Reconsideration and Clarification*, CC Docket No. 96-128 (filed May 29, 2001).

underlying facilities-based carriers or resellers.”⁸ To the extent that Global Crossing has in the future any specific grievance over a specific contractual arrangement, it is of course free to seek appropriate relief from the Commission at that time. Until such time, however, there are no circumstances that warrant the Commission’s grant of Global Crossing’s extremely broad request.

Conclusion

For the foregoing reasons, Network Enhanced Telecom, LLP d/b/a Network IP respectfully submits that the Commission should deny any petitions that seek to 1) use timing surrogates as a proxy for a completed call; 2) define a completed call as one that is passed to a facilities-based reseller; or 3) limit the ability of carriers to contract freely with one another in the payphone compensation context.

Respectfully submitted,



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Second Order on Reconsideration ¶ 19.